IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT APPEAL Nos.607 of 2002 & 1104 of 2003

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 14/12/2001 in WP NO : 14582 OF 1991 on the file of the High Court.)

W.A.No.607 of 2002

Between:

M/s.Bharat Electronics Limited Trade Centre,

116/2,Race Cource Road
Banglore - 560 001

rep.by its Chairman and Managing Director.

..... APPELLANT

AND

1 M/s.Andhra Scientific Company Ltd

Machilipatnam, rep.by its Managing Director
Sri.C.Ramanatha Babu Plot.No.1231,

Road No.60,Jubilee Hills, Hyderabad
2 M/s.Andhra Scientific Company Ltd.

Machilipatnam, Rep. by its Director

Sri.R.D.L.Narasimha Rao
R/o.Godugupet Machilipatnam

3 C.Ananda Babu S/o.Ramantha Babu
R/o.Plot No.1231,Road No.60,

Jubilee Hills, Hyderabad
4 C.Arvinda Babu S/o.Ramanatha Babu
R/o.Plot No.1231,Road No.60,

Jubilee Hills, Hyderabad
5 Union of India, Rep.by its

Secretary to the Government,Ministry of Industries
Department of Industrial Development New Delhi
6 Union of India, Rep.by its

Secretary to the Government, Ministry of Defence,
Govt. of India, New Delhi.

.....RESPONDENTS

Counsel for the Appellant: MR.S.V.BHATT

Counsel for Respondent Nos.1 to 4: Mr.V.Rajagopala Reddy, Advocate

Counsel for Respondent Nos.5 and 6: Mr.T.Suryakaran Reddy, Senior Central Government Standing Counsel

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W.A.No.1104 of 2003

Between:

1 Union of India rep by its Secretary to the Govt.
Ministry of Industries, Department of Industrial Development
New Delhi.
2 Union of India Rep by its Secretary to the Govt.
Ministry of Deference, Govt. of India,
New Delhi.

..... APPELLANTS

AND

1 M/s Bharat Electronics Ltd rep by its

Chairman and Managing Director
Trade Centre, 116/2, Race Course Road,
Bangalore - 560 001.
2 M/s. Andhra Scientific Company Ltd.

rep by its Managing Director
Sri. C. Ramanatha Babu, Plot No.1231,

Road No.60, Jubliee Hills, Hyderabad.

3 M/s. Andhra Scientific Company Ltd., rep by its Director
Sri R.D.I. Narasimha Rao, R/o. Godugupet, Machilipatnam.

4 C Ananda Babu,S/o.Ramanatha Babu
R/o. Plot No.1231, Road No.60 Jubilee Hills,
Hyderabad.

5 C. Aravinda Babu,S/o.Ramanatha Babu
Plot No.1231, Hyderabad. Road No.60,

Jubilee Hills, Hyderabad.

.....RESPONDENTS

Counsel for the Appellants: Mr.T.Suryakaran Reddy, Senior Central Government Standing Counsel

Counsel for the Respondent No.1: Mr.K.Srinivasa Murthy, Advocate

Counsel for the Respondent Nos.2 to 5: Mr.V.Raja Gopal Reddy, Advocate

The Court made the following :

COMMON JUDGMENT: (Per Hon'ble Sri Bilal Nazki, The Acting Chief Justice)

These two Writ Appeals are filed against the judgment of learned single Judge in W.P.No.14582 of 1991, dated
14-12-2001. The learned single Judge allowed the writ petition with costs quantified at Rs.20,000/-. The respondents in the writ petition are aggrieved of the said order, and hence, they filed the present Writ Appeals.

The writ petition was basically filed by a Company *viz*., M/s. Andhra Scientific Company Ltd, Machilipatnam, seeking a declaration that the letter dated 20-09-1991 issued by the second respondent in the writ petition was invalid. It also sought consequential direction to the respondents to pay the balance residuary amount to the petitioner-Company.

For the sake of convenience, the parties shall be referred to as they appeared in the writ petition.

The controversy reveals around the interpretation to the provisions of Andhra

Scientific Company Limited (Acquisition and Transfer of Undertakings) Act, 1982 (hereinafter referred to as 'the Act'). The petitioner-Company claimed that they were entitled to compensation amounts due to them under Sections 7 and 8 of the Act as all the liabilities under Section 21 read with the Schedule to the Act had been met. Commissioner had been left with an amount of one crore of rupees after meeting the liabilities of the Company, and in terms of Section 23 of the said Act, the Commissioner was obliged to pay the said amount to the Company. The Company represented to the Government that the Commissioner was not right in handing over the amounts to a Government Company i.e., Bharat Electronics Limited. Second respondent by his letter dated 20-09-1991 informed the petitioner-Company that the Commissioner appointed for payments had completed his work on 31st March, 1990, and the office of the Commissioner of payments had been wound up. Therefore, if the petitioners were interested in receiving any payments, they should move the appropriate Court of law.

The facts which led to filing of the writ petition have been mentioned by the learned single Judge in detail, and there is no dispute on facts. Therefore, the facts as narrated by the learned single Judge shall be mentioned as far as they are relevant.

The petitioner-Company was a registered company and was a largest public sector undertaking in the field of manufacture of scientific instruments. Although the Company had been established in 1937, there was a decline in the production of the Company in 1965 and 1966 and started incurring losses. Keeping in view that the Company had the necessary infrastructure, talented scientists and staff, its management was taken over by the Central Government under Section 18AA of the Industries (Development and Regulation) Act, 1951, in June, 1972. It was done to secure proper management of the undertakings so as to serve the public purpose for which the company had been established. Initially, the management was taken over for five years ending on 26-6-1971. However, it was extended from time to time till 26-12-1981. This arrangement also did not, perhaps, work out, and an Act was passed known as Andhra Scientific Company Limited (Acquisition and Transfer of Undertakings) Act, 1982. By this Act, the Company was acquired. It provided for payment of certain amounts to the Commissioner of payments constituted under the Act for eventual disbursement of the amounts in the manner envisaged in the Act.

Section 19 laid down the priorities by which the amounts paid by the Government of India to the Commissioner had to be disbursed amongst various categories specified in the schedule to the Act. After disbursing those liabilities, if any balance was left with the Commissioner, such balance had to be disbursed to the Company.

A glance at the Act would show that the 'Commissioner' would mean the Commissioner of Payments appointed under Section 15 of the Act. 'Company' would mean the Andhra Scientific Company Limited. Under Section 3 of the Act, on the appointed day, the undertakings of the Company, and the right, title and interest of the Company in relation to its undertakings stood transferred and vested in the Central Government. Under Section 5 of the Act, every liability of the Company in respect of any period prior to its acquisition would be a liability of the Company and would be enforceable against it. The liabilities were not enforceable against the Central Government under Section 6(2). Section 6(2) of the Act laid down:

> 'Where the right, title and interest of the company, in relation to its undertakings, vest in a Government Company under sub-section (1) the Govt. Company shall on and from the date of such vesting be deemed to have become the owner in relation to such undertakings, and all the rights and liabilities of the Central Government in relation to such undertakings shall on and from the date of such vesting be deemed to have become the rights and liabilities of the Government Company.'

Under Section 8, the Central Government was obliged to make payments of certain amounts and Section 8(1) laid down as under:

> 'For the deprivation of the Company of the management of its undertakings, there shall be given by the Central Government to the Company in cash, an amount caliculated at the rate of rupees ten thousand per annum for the period commencing on the date on which the management of the undertakings of the Company was taken over in pursuance of the order made by the Central Government under section 18AA of the Industries (Development and Regulation) Act 1951 and ending on the appointed day.'

Section 8(3) laid down:

> 'The amount specified in Section 7, and the amount determined in accordance with the provisions of

sub-section (1) and (2) shall carry simple interest at the rate of four per cent, per annum for the period commencing on the appointed day and ending on the date of which payment of such amounts is made by the Central Government to the Commissioner.'

The Act gives a scheme under which the liability of the Company had to be met. Section 23 laid down:

'(1) If, out of the moneys paid to him, in relation to the undertakings of the Company, there is a balance left after meeting the liabilities as specified in the Schedule, the Commissioner shall disburse such balance to the company.

(2) Where the possession of any machinery, equipment or other property has vested in the Central Government or a Government Company under this Act, but such machinery equipment or other property does not belong to the company it shall be lawful for the Central Government or the Government Company to continue to possess such machinery or equipment or other property on the same terms and conditions under which they were possessed by the Company immediately before the appointed day.'

It would also be necessary to have a look at Section 15, by which the Central Government was obliged to appoint the Commissioner for making the payments. Sub-section (3) of Section 15 laid down:

'Any person authorized by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and with the same effect as it they have been conferred on that person directly by this Act and not by way of authorization.'

The simple case of the petitioner before the learned single Judge was that all liabilities were taken care of by the Commissioner and an amount remained with him, which was not disbursed. Therefore, the order should have been passed for disbursement of the amounts.

On the other hand, the case of the respondents was communicated in the letter dated 20-09-1991 which reads as under:

> 'I am directed to refer to your representation dated
> 22nd July, 1991 on the above subject and to say that the matter has been considered carefully. As you know, the Commissioner of Payments appointed under the provisions of ASCO Act to settle all claims filed before him, completed his work on 31st March, 1990 and the office of COP has already been wound up. As required under the Act, you could have filed your application before the COP. Since the matter of quasi-judicial nature, the Government cannot intervene. If you wish, you may make your claim before the appropriate Court of law.'

This order shows that the entitlement of the petitioner-Company to receive the amounts was not denied. Only it was stated that the Director's office was not in existence as it had been wound up. The third respondent in the writ petition, who is now the appellant, contended before the learned single Judge that the third respondent was entitled to the balance of the amounts left after meeting the liabilities. The learned single Judge has extracted the contention raised in the counter affidavit filed by the third respondent and the learned single Judge, in our view, was right in holding that,

> 'Having regard to the specific stand of respondents 1 and 2, the inference is irresistible that these contentions have been urged even without a perusal of the provisions of the 1982 Act. Firstly respondents 1 and 2 appear to entertain a wholly unfounded impression, borne possibly out of flights of imagination, that the Company has ceased to exist with the enactment of the 1982 Act. There is seen no material foundation for such hallucination.'

We have already discussed the scheme of the Act, and particularly, Section 23 of the Act, which laid down that out of the money paid to him in relation to the undertakings of the Company, if there is any balance left after meeting the liabilities, the Commissioner shall disburse the balance amount to the Company, and Company has been defined under Section 2 (c), which means the Andhra Scientific Company Limited, a Company within the meaning of the Company Act, 1956 and having its registered office at Machilipatnam in the State of Andhra Pradesh. So, such an argument made by the appellants before the learned single Judge was rightly rejected as it had no legal basis. The learned single Judge coming to the conclusion, to which we agree, that the petitioners have the claim to the undisbursed

amount, which remained with the Commissioner after disbursement of the amounts on account of liabilities of the Company, was not even challenged by the learned Senior Counsel appearing before us. He was only aggrieved with the methodology of the learned single Judge to disburse the amounts. Even in memo of appeal, the appellants have not stated that they are entitled to the amount. They simply said that the entrustment of the amount by the Commissioner to them could only be challenged by the Central Government and none else. The learned single Judge directed,

> 'The 1st respondent shall forthwith issue a notification under Section 15 of the 1982 Act appointing a Commissioner of Payments duly directing the said Commissioner of Payments to take up and complete the functions inhering in such Commissioner of Payments under the provisions of the 1982 Act including payment of all the liabilities, if any, under the provisions of Sections 18 to 22 and thereafter to make payment of the balance amount to the Andhra Scientific Company Limited as required under Section 23 of the 1982 Act from out of the funds paid by the 3rd respondent as directed above. Before making payments in respect of any claims under Sections 18 to 22, the Commissioner of Payments appointed under Section 15, shall afford an opportunity to the Company of refuting the claim, as required under Section 21(4) of the 1982 Act, in respect of such claims.'

Since this is the only method by which the amounts can be disbursed, therefore, in our view, the learned single Judge was right in directing the Central Government to appoint a Commissioner by issuing a notification under Section 15 of the Act. The other objections taken by the appellants were that there were still certain liabilities, which were to be taken care of. We understand that there was a claim by Andhra Bank. They filed an appeal against the order of the Commissioner before the learned District Judge.

For these reasons, we do not find any ground to interfere with the order passed by the learned single Judge. Both the appeals are accordingly dismissed. No order as to costs.

(Bilal Nazki, A.C.J)

(Dr.G.Yethirajulu, J)

10th June, 2005

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Copy to:

1 Secretary to the Government,

Union of India, Ministry of Industries
Department of Industrial Development New Delhi

2 Secretary to the Government,

Union of India, Ministry of Defence,
Govt. of India, New Delhi.

3 Chairman and Managing Director

M/s Bharat Electronics Ltd

Trade Centre, 116/2, Race Course Road,
Bangalore - 560 001.

4 Two CD copies.